

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT L. CREWS,

Plaintiff,

v.

SARGEANT WALDO,

Defendant.

NO: 2:15-CV-0357-TOR

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
FIRST AMENDED COMPLAINT,
AND DENYING MOTION FOR
APPOINTMENT OF COUNSEL

1915(g)

Magistrate Judge Dimke filed a Report and Recommendation on April 5, 2016 (ECF No. 10), recommending that Plaintiff's First Amended Complaint (ECF No. 9) be dismissed for failure to state a claim upon which relief may be granted and that such dismissal count as one strike under 28 U.S.C. § 1915(g). Plaintiff did not file objections.

Instead, on April 13, 2016, Plaintiff submitted a document titled, "Application for Court Appointed Counsel," which has been construed as a Motion for Appointment of Counsel (ECF No. 11). The motion was set for hearing on May 13,

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2016, but has been considered without oral argument on today's date. In his motion, Plaintiff offers no basis to alter or modify the Magistrate Judge's recommendation. The Court has assumed that Plaintiff's allegations are true. Nevertheless, they do not rise to the level of a constitutional violation.

DISMISSAL

For the reasons set forth by Magistrate Judge Dimke, **IT IS ORDERED** that the Report and Recommendation (ECF No. 10) is **ADOPTED in its entirety**; the First Amended Complaint (ECF No. 9) is **DISMISSED with prejudice** for failure to state a § 1983 claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1); and the Motion for Appointment of Counsel (ECF No. 11) is **DENIED as moot**.

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims.**

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REVOCATION OF *IN FORMA PAUPERIS* STATUS

Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” The good faith standard is satisfied when an individual “seeks appellate review of any issue not frivolous.” *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The Court finds that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact. Accordingly, the Court hereby revokes Plaintiff's *in forma pauperis* status. If Plaintiff wishes to pursue an appeal, he must pay the requisite filing fee.

IT IS HEREBY ORDERED:

1. The District Court Executive is directed to enter this Order, enter Judgment, forward copies to Plaintiff at his last known address, and **CLOSE** the file.
2. The District Court Executive is further directed to forward a copy of this Order to the Office of the Attorney General of Washington, Criminal Justice Division.

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3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

DATED April 29, 2016.




THOMAS O. RICE
Chief United States District Judge